

# EXHIBIT X

Page 1	Page 2																																																																														
<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION</p> <hr/> <p>MICHAEL CLOUD, Plaintiff, VS. CASE NO. 3:20-cv-1277-S</p> <p>THE BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN, Defendant.</p> <hr/> <p>TRANSCRIPT OF BENCH TRIAL HEARD BEFORE THE HONORABLE KAREN GREN SCHOLER UNITED STATES DISTRICT JUDGE</p> <p>MAY 23, 2022</p> <hr/> <p>APPEARANCES: FOR THE PLAINTIFF: Christian Dennie BARLOW GARSEK &amp; SIMON, LLP 920 Foch Fort Worth, Texas 76107 cdennie@bgsfirm.com Paul J. Vitanza BARLOW GARSEK &amp; SIMON, LLP 920 Foch Fort Worth, Texas 76107 pvitanza@bgsfirm.com</p>	<p>1 A P P E A R A N C E S (Continued)</p> <p>2</p> <p>3 FOR THE DEFENDANT: Mr. Edward J. Meehan GROOM LAW GROUP CHARTERED 1701 Pennsylvania Avenue NW Washington, D.C. 20006 emeehan@groom.com Michael Lee Junk GROOM LAW GROUP CHARTERED 1701 Pennsylvania Avenue NW Washington, D.C. 20006 mjunk@groom.com Nolan Knight MUNSCH HARDT KOPF &amp; HARR, PC 3800 Lincoln Plaza 500 North Akard Street Dallas, Texas 75201 nknight@munsch.com</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 Official Court Reporter: Thu Bui, CSR, RMR, CRR 1100 Commerce Street, #1654 Dallas, Texas 75242 (214) 753-2354</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Proceedings recorded by mechanical stenography, 25 transcript produced via computer.</p>																																																																														
Page 3	Page 4																																																																														
<p>1                   I N D E X</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">3</th> <th style="width: 80%;">PAGE</th> <th style="width: 10%;"></th> </tr> </thead> <tbody> <tr> <td>4 Appearances.....</td><td style="text-align: right;">1</td><td>1 P R O C E E D I N G S</td></tr> <tr> <td>5 Proceedings.....</td><td style="text-align: right;">4</td><td>2 (Call to order of the court.)</td></tr> <tr> <td>6 JENNIFER CLOUD (by videotape)</td><td></td><td>3 THE COURT: This is the continuation of the trial in</td></tr> <tr> <td>7              Direct     Cross</td><td></td><td>4 3:20-cv-1277-S, Michael Cloud versus the Bert Bell/Pete Rozelle</td></tr> <tr> <td></td><td style="text-align: right;">6</td><td>5 NFL Player Retirement Plan.</td></tr> <tr> <td>8 DICK CASS (by videotape)</td><td></td><td>6 Counsel, please make your appearance on the record.</td></tr> <tr> <td>9              Direct</td><td></td><td>7 MR. DENNIE: Good morning, Your Honor. Christian</td></tr> <tr> <td></td><td style="text-align: right;">17</td><td>8 Dennie and Paul Vitanza on behalf of the plaintiff. Also with</td></tr> <tr> <td>10 DICK CASS</td><td></td><td>9 plaintiff, Michael Cloud. Thank you.</td></tr> <tr> <td>11              Direct     Cross</td><td></td><td>10 THE COURT: Thank you.</td></tr> <tr> <td></td><td style="text-align: right;">36, 214    136, 216</td><td>11 And on behalf of the defendant?</td></tr> <tr> <td>12 PATRICK REYNOLDS (by deposition)</td><td></td><td>12 MR. MEEHAN: Good morning, Your Honor. Edward Meehan</td></tr> <tr> <td>13              Direct     Cross</td><td></td><td>13 with Michael Junk and Nolan Knight.</td></tr> <tr> <td>14              237        245</td><td></td><td>14 THE COURT: Thank you.</td></tr> <tr> <td>15 Adjournment.....</td><td style="text-align: right;">288</td><td>15 Where we left off on Friday is -- the plan was to</td></tr> <tr> <td>16 Reporter's Certificate.....</td><td style="text-align: right;">289</td><td>16 pick up this morning with the defendant's tender of Jennifer</td></tr> <tr> <td>17</td><td></td><td>17 Cloud's portions of her deposition that they want play. We</td></tr> <tr> <td>18</td><td></td><td>18 had some technical issues going on. I think they've been</td></tr> <tr> <td>19</td><td></td><td>19 resolved.</td></tr> <tr> <td>20</td><td></td><td>20 Is that still the plan?</td></tr> <tr> <td>21</td><td></td><td>21 MR. MEEHAN: Yes, Your Honor.</td></tr> <tr> <td>22</td><td></td><td>22 THE COURT: Okay. And that being the case, unless</td></tr> <tr> <td>23</td><td></td><td>23 there's anything you-all want to take up before we start in</td></tr> <tr> <td>24</td><td></td><td>24 with defendant's offer of Jennifer Cloud, is there anything?</td></tr> <tr> <td>25</td><td></td><td>25 MR. DENNIE: Your Honor, the only thing I wanted to</td></tr> </tbody> </table>	3	PAGE		4 Appearances.....	1	1 P R O C E E D I N G S	5 Proceedings.....	4	2 (Call to order of the court.)	6 JENNIFER CLOUD (by videotape)		3 THE COURT: This is the continuation of the trial in	7              Direct     Cross		4 3:20-cv-1277-S, Michael Cloud versus the Bert Bell/Pete Rozelle		6	5 NFL Player Retirement Plan.	8 DICK CASS (by videotape)		6 Counsel, please make your appearance on the record.	9              Direct		7 MR. DENNIE: Good morning, Your Honor. Christian		17	8 Dennie and Paul Vitanza on behalf of the plaintiff. Also with	10 DICK CASS		9 plaintiff, Michael Cloud. Thank you.	11              Direct     Cross		10 THE COURT: Thank you.		36, 214    136, 216	11 And on behalf of the defendant?	12 PATRICK REYNOLDS (by deposition)		12 MR. MEEHAN: Good morning, Your Honor. Edward Meehan	13              Direct     Cross		13 with Michael Junk and Nolan Knight.	14              237        245		14 THE COURT: Thank you.	15 Adjournment.....	288	15 Where we left off on Friday is -- the plan was to	16 Reporter's Certificate.....	289	16 pick up this morning with the defendant's tender of Jennifer	17		17 Cloud's portions of her deposition that they want play. We	18		18 had some technical issues going on. I think they've been	19		19 resolved.	20		20 Is that still the plan?	21		21 MR. MEEHAN: Yes, Your Honor.	22		22 THE COURT: Okay. And that being the case, unless	23		23 there's anything you-all want to take up before we start in	24		24 with defendant's offer of Jennifer Cloud, is there anything?	25		25 MR. DENNIE: Your Honor, the only thing I wanted to	
3	PAGE																																																																														
4 Appearances.....	1	1 P R O C E E D I N G S																																																																													
5 Proceedings.....	4	2 (Call to order of the court.)																																																																													
6 JENNIFER CLOUD (by videotape)		3 THE COURT: This is the continuation of the trial in																																																																													
7              Direct     Cross		4 3:20-cv-1277-S, Michael Cloud versus the Bert Bell/Pete Rozelle																																																																													
	6	5 NFL Player Retirement Plan.																																																																													
8 DICK CASS (by videotape)		6 Counsel, please make your appearance on the record.																																																																													
9              Direct		7 MR. DENNIE: Good morning, Your Honor. Christian																																																																													
	17	8 Dennie and Paul Vitanza on behalf of the plaintiff. Also with																																																																													
10 DICK CASS		9 plaintiff, Michael Cloud. Thank you.																																																																													
11              Direct     Cross		10 THE COURT: Thank you.																																																																													
	36, 214    136, 216	11 And on behalf of the defendant?																																																																													
12 PATRICK REYNOLDS (by deposition)		12 MR. MEEHAN: Good morning, Your Honor. Edward Meehan																																																																													
13              Direct     Cross		13 with Michael Junk and Nolan Knight.																																																																													
14              237        245		14 THE COURT: Thank you.																																																																													
15 Adjournment.....	288	15 Where we left off on Friday is -- the plan was to																																																																													
16 Reporter's Certificate.....	289	16 pick up this morning with the defendant's tender of Jennifer																																																																													
17		17 Cloud's portions of her deposition that they want play. We																																																																													
18		18 had some technical issues going on. I think they've been																																																																													
19		19 resolved.																																																																													
20		20 Is that still the plan?																																																																													
21		21 MR. MEEHAN: Yes, Your Honor.																																																																													
22		22 THE COURT: Okay. And that being the case, unless																																																																													
23		23 there's anything you-all want to take up before we start in																																																																													
24		24 with defendant's offer of Jennifer Cloud, is there anything?																																																																													
25		25 MR. DENNIE: Your Honor, the only thing I wanted to																																																																													

Page 53	Page 54
<p>1 doctor's opinion. We would send out the player for another      2 opinion. If that second opinion came back positive, saying he      3 was entitled, then generally that would just -- that would end      4 the appeal. The player would receive the benefit.</p> <p>5 Sometimes the opinions would come back so varied and so      6 different in nature that we would then send it -- that's when      7 we would send it out to a medical advisory physician because      8 there was a sort of conflict in the two opinions -- two      9 doctors' opinions -- or it wasn't clear. And we had a medical      10 advisor who was a medical advisor to the board, and Dr. Jackson      11 was the medical -- the medical director -- I'm sorry -- the      12 medical director of the board. He would help advise us on      13 whether or not it made sense to what we would say "map a      14 decision," meaning send it out to a medical advisory physician.      15 So the vast majority of our decisions were very straightforward      16 if there was -- based on what the doctor said.</p> <p>17 And then we had a subset of decisions which were different      18 in nature. You know, reclassification was one where it didn't      19 necessarily involve a medical decision. It could have, but      20 many times it didn't. It was a matter of applying a couple of      21 provisions to the facts at hand.</p> <p>22 So just going through that gives you some flavor of what      23 our job was. This was a job, in reviewing appeals, that was      24 heavily, heavily determined by what a doctor -- an independent      25 doctor said. And I think the way the doctors -- the way the</p>	<p>1 whole system worked, we had a medical advisor. And the medical      2 advisor then helped us set up a network of independent neutral      3 physicians around the country. And those independent neutral      4 physicians would be the ones who would do -- for the most part,      5 do the medical examination of a player, both at the initial      6 claims level and on appeal.</p> <p>7 And then we had the third type of doctor we had. In      8 addition to the medical director and the independent neutral      9 physicians, we had the medical advisory physician. So we had      10 three types of doctors that were advising the board on      11 these -- on the various medical issues that confronted us.</p> <p>12 Q. Just to fill in a few details. What was the role, as you      13 perceived it, of the Initial Claims Committee?</p> <p>14 A. The Initial Claims Committee would -- would make a      15 judgment on, you know, basically initial claims. An      16 application would be filed with the Plan Benefits Office which      17 is in Baltimore. They would pull together the papers, send it      18 out to the two members of the Initial Claims Committee. And      19 like everything else in this process, it's a check-and-balance      20 system.</p> <p>21 So there's two members of the Initial Claims Committee,      22 one appointed by the League and one appointed by the union.      23 And so that -- that would -- and then they would get it, they      24 would process the papers, they would receive a neutral      25 physician opinion. And normally, based on that opinion, they</p>
<p style="text-align: center;">Page 55</p> <p>1 would decide it.</p> <p>2 And, again, if they couldn't agree, it would be called a      3 "deemed denial" unless the medical advisory said, I think      4 this -- I think you're reading it wrong. On this medical      5 issue, I think this is the way we should go; then that would      6 become the decision of the Initial Claims Committee. So their      7 job was really to make the initial decision, and then -- then      8 it was up to the player to decide whether or not if -- if he      9 did get it, whether or not he wanted to appeal.</p> <p>10 Q. Okay. Sir, you've talked a lot about doctors and medical      11 opinions. You've also indicated that there was something      12 different about a reclassification request. I want to bring      13 that out a little bit now.</p> <p>14 Was it the practice of the board to always, each and every      15 case, send a claim out to a doctor?</p> <p>16 A. No, it was not.</p> <p>17 Q. And can you explain why some cases were not sent out to      18 the doctors?</p> <p>19 A. Well, I think --</p> <p>20 Q. At the board level, I should say?</p> <p>21 A. Yeah. I mean, at the -- on appeal -- in this case, for      22 example, Mr. Cloud's case, we didn't think -- I didn't think      23 there was a medical issue involved because it was clear, I      24 thought, in this case --</p> <p>25 MR. DENNIE: I'm going to object, Your Honor. It's not</p>	<p style="text-align: center;">Page 56</p> <p>1 personal knowledge. Lack of foundation.</p> <p>2 THE COURT: Sustained. All his review for Mr. Cloud is      3 preparing for a deposition. He's already testified under oath      4 that he has no personal knowledge of what happened to      5 Mr. Cloud. So if he's pulling out Mr. Cloud, there needs to be      6 some kind of foundation as to why he didn't go to the doctor.      7 So the objection is sustained. For many reasons.</p> <p>8 Q. Okay. Mr. Cass, I'm going to ask you a question, but I'm      9 going to ask you to confine yourself to your understanding of      10 the general process. We're not going to apply it to Mr. Cloud      11 at this point.</p> <p>12 A. Okay.</p> <p>13 THE COURT: The Court has heard nothing, direct      14 evidence, as to Mr. Cloud in the testimony to date. From what      15 this witness has said, he can not add to that other than      16 talking about generalities. If the Court is misunderstanding      17 that, please clarify.</p> <p>18 You may ask your next question.</p> <p>19 MR. MEEHAN: Okay. Thank you, Your Honor. Your Honor,      20 if it's acceptable to the Court, what I'm going to do is lay      21 out -- or give Mr. Cass an opportunity to lay out his general      22 approach.</p> <p>23 THE COURT: Sure. And that's what you've been doing,      24 and I understand that. And you kind of diverted to something      25 he has no personal knowledge or memory of, as of I've been</p>

Page 57	Page 58
<p>1 advised.</p> <p>2 MR. MEEHAN: Right. Sorry, Your Honor.</p> <p>3 THE COURT: Why don't you just ask your next question.</p> <p>4 And the objection's sustained.</p> <p>5 MR. MEEHAN: Fair enough.</p> <p>6 Q. Okay. So, Mr. Cass, we were going to -- what I'm asking</p> <p>7 you is, was it the practice, in all cases, of the board to send</p> <p>8 every claim out for a medical review at the board level?</p> <p>9 A. It was not.</p> <p>10 Q. Okay. And can you explain the situations in which the</p> <p>11 board determined not to send a particular case out for an</p> <p>12 additional medical review?</p> <p>13 A. It would typically be an issue where there was not a</p> <p>14 medical issue involved in the appeal -- where the board</p> <p>15 determined that there was not a medical issue involved in the</p> <p>16 appeal.</p> <p>17 Q. And can you illustrate what types of issues the -- that</p> <p>18 you, while you were on the board, had concluded were not</p> <p>19 necessary to have a new medical --</p> <p>20 A. There were times when reclassification opinions fell under</p> <p>21 that category.</p> <p>22 Q. Okay. And can you explain why, in your view,</p> <p>23 reclassification opinions did not fall into that category?</p> <p>24 A. It depended on the situation. There could be cases where</p> <p>25 a reclassification case would require an opinion of a doctor.</p>	<p>1 But where -- in a situation where there's -- on its face, the</p> <p>2 board did not believe that there was a -- that there was a new</p> <p>3 impairment alleged, then it wouldn't -- it might well be a case</p> <p>4 where there's no obligation to get a medical opinion because it</p> <p>5 was not a medical issue.</p> <p>6 Q. Okay. All right, sir. Let me take you now back again to</p> <p>7 your practices and your habits with respect to review of claims</p> <p>8 and how these board meetings worked.</p> <p>9 Were there materials available to you, as a board member,</p> <p>10 to review in advance of board meetings that concerned these</p> <p>11 disability claims?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And can you describe how you accessed materials --</p> <p>14 you know, how you went about that?</p> <p>15 A. There was a website you could go onto and read about the</p> <p>16 cases.</p> <p>17 Q. And what types of materials were -- were posted on that</p> <p>18 website?</p> <p>19 A. Usually the Administrative Record on appeal -- what I</p> <p>20 understood to be the Administrative Record on appeal.</p> <p>21 Q. And what -- if you could give your understanding, what</p> <p>22 does that term "Administrative Record on appeal" mean to you as</p> <p>23 you were applying it while you were on the board?</p> <p>24 A. You know, it was -- it was whatever the player had</p> <p>25 submitted either to the Initial Claims Committee. It was the</p>
Page 59	Page 60
<p>1 medical opinions that had been rendered at the -- at the -- to</p> <p>2 the -- at the Initial Claims Committee level. It would include</p> <p>3 whatever additional medical opinions had been received at the</p> <p>4 appeal -- at the appellate level. It would include</p> <p>5 the -- whatever additional -- the player was allowed to submit</p> <p>6 additional materials after the Initial Claims decision. So it</p> <p>7 would include, on appeal, of -- the Administrative Record would</p> <p>8 exclude whatever additional materials the player had submitted.</p> <p>9 It would also, generally, include, if there were prior</p> <p>10 proceedings regarding the player where he had applied earlier</p> <p>11 for other benefits under the disability plan, there would be</p> <p>12 additional materials relating to that, typically.</p> <p>13 Q. And did you, sir, have a personal practice as to the type</p> <p>14 of review you conducted of materials available to you on the</p> <p>15 board concerning claims?</p> <p>16 A. I would look at the materials and see what -- try to</p> <p>17 understand exactly what the issues were on appeal. Then I</p> <p>18 would look at the documents that I thought were pertinent to</p> <p>19 that issue.</p> <p>20 Q. Okay. Did you have criteria that you followed during the</p> <p>21 time to help you determine what you thought were pertinent to</p> <p>22 the issues when you're reviewing a reclassification claim?</p> <p>23 A. Well, I would -- on a reclassification claim?</p> <p>24 Q. Yes.</p> <p>25 A. You know, I always -- in looking at the appeal, I would</p>	<p>1 always -- whatever the appeal, I would generally look at</p> <p>2 the -- many players would submit a letter with the appeal, or a</p> <p>3 memo or something, so I would typically start with that, look</p> <p>4 at that 'cause that would sort of indicate what the issues</p> <p>5 were. I would look at the decision of the Initial Claims</p> <p>6 Committee -- the Initial Claims Committee letter. I would</p> <p>7 look -- if there were new materials submitted on appeal, I</p> <p>8 would probably look at those if the player submitted something</p> <p>9 new.</p> <p>10 We also had a Plan summary that was on top, that I would</p> <p>11 look at that. Those are generally the things I would make sure</p> <p>12 to look at. And then, based on that, I might look at some</p> <p>13 other materials.</p> <p>14 Q. Okay. So have you now described your practice that you</p> <p>15 followed in reviewing these reclassification claims while you</p> <p>16 were on the board?</p> <p>17 A. Yes.</p> <p>18 Q. Let me step back a little bit to get a little broader</p> <p>19 sense of how this worked. The quarterly board meetings, over</p> <p>20 what period of time were they conducted?</p> <p>21 A. It was always -- well, I wouldn't say always. Maybe there</p> <p>22 were some exceptions. But almost always, as far as I can</p> <p>23 remember, it was a two-day meeting.</p> <p>24 Q. And can you describe what happens on day one and then what</p> <p>25 happens on day two?</p>

Page 61	Page 62
<p>1 A. Well, I think -- you know, I think on day one it was      2 generally we would be meeting on financial issues and -- at the      3 board level. Talking to the -- the financial meetings, getting      4 reports from the financial advisors, getting reports on various      5 matters relating to the pension plan and sort of aggregate      6 numbers on the disability plan. But there's also a time in      7 between the meetings to talk to others. And so it was a way      8 of -- you would get an idea of what other issues were in front      9 of us on the cases and on other matters.</p> <p>10 And then, while we were formally meeting -- I mean, there      11 was -- ongoing work was going on on the cases among -- between      12 the union representatives and the League representatives. And      13 Groom law firm.</p> <p>14 Q. All right. And in the excerpts of your testimony that      15 were played, there were references to what was called      16 "premeetings." Can you explain in more detail what were the      17 premeetings?</p> <p>18 A. Well, there was -- on the morning the second day, there      19 was a premeeting where the board members on -- for the NFL      20 would meet separately from the board members for the union.      21 And we would be -- at those meetings, there would be the      22 management -- in our meetings, we'd have the NFL lawyers,      23 the -- and also our outside -- the Akin Gump lawyers. Staff of      24 the Plan Benefit Office would come in and give a report.      25 Perhaps, the Groom law firm lawyers would come in and give a</p>	<p>1 report. And we would discuss the cases, among other things.      2 Q. There was also a reference to a process of interacting      3 between the management side and the labor side concerning these      4 claims in advance of the formal vote on claims. Can you      5 describe that?</p> <p>6 A. I think leading up to the meetings, and at the meetings,      7 the lawyers for both the -- the players union and for the NFL      8 would get together and discuss the cases. And you would      9 have -- and then the Groom law firm would be involved, as well,      10 because there might be questions for them. So -- and they      11 would see if there was a consensus on -- if they had major      12 disagreements on any -- on any of the appeals that were before      13 us at that upcoming meeting.</p> <p>14 Q. What was the purpose of the two sides -- management and      15 labor -- having these discussions in advance of the vote on any      16 claim?</p> <p>17 A. It was really to try to focus and present the issue to the      18 full board and to see -- to see if there's any disagreement.      19 As I said, because of the way the process here worked and it      20 was so heavily dependent on medical decisions, it was rare that      21 there was a disagreement. And if there were a disagreement on      22 a medical issue, it usually resulted in sending it      23 out -- tabling the decision and sending it out for an      24 additional opinion from a medical advisory physician.</p> <p>25 Q. In the instances of reclassification appeals, what was the</p>
Page 63	Page 64
<p>1 purpose of having the two sides' advisors having these      2 premeeting discussions?</p> <p>3 A. Well, just to lay out the issues to see if they saw the      4 issues the same way so when they'd present it to the board,      5 each set of board members would know whether or not there was a      6 disagreement on the issue that had to be resolved.</p> <p>7 Q. And what was it -- as a board member -- you were expecting      8 the advisors to accomplish in those premeeting discussions?</p> <p>9 A. Really to identify issues for us that were -- if there was      10 a major disagreement and a problem. You know, I think the way      11 the Plan is set up, if there's an agreement on a medical issue,      12 we sent it out to a medical advisory physician, as I've said a      13 couple of times. If it's a disagreement on something else, you      14 would have to send it to arbitration, and that's what would      15 happen if you couldn't agree on an appeal.</p> <p>16 I think in my 11 years on the board, while we had many,      17 many -- I don't want to call them disagreements, but a decision      18 basically to table it because it was uncertain, then it would      19 go out to a medical advisory opinion on medical issues. But on      20 other issues -- I can recall one case where it went to      21 arbitration. I don't even remember what that case was. But in      22 the 11 years I was on the board, I only remember one case that      23 required us to go to arbitration.</p> <p>24 Q. Are you certain it was not the Michael Cloud case?</p> <p>25 A. It was -- it was not the Michael Cloud case.</p>	<p>1 Q. Sir, the decision letters that were prepared --      2 A. Yes.</p> <p>3 Q. -- reflecting board -- the board conclusion here, how did      4 that process --</p> <p>5 MR. DENNIE: I'm going to object 'cause that calls for      6 speculation for this witness.</p> <p>7 THE COURT: He didn't ask his question yet. Overruled.      8 A premature objection.</p> <p>9 MR. DENNIE: I'll wait. Sorry.</p> <p>10 Q. Sir, the process for drafting decision letters for the      11 board, can you explain, sir, why that was delegated to the      12 Groom Law Group?</p> <p>13 A. It really was a -- an issue of the way ERISA works and the      14 way our Plan worked. Our Plan document really has to comply      15 with ERISA. There's a provision in ERISA, as I understand it,      16 that requires once a board makes a decision on a disability      17 matter, we had to inform the affected person, in this case a      18 retired player, of our decision. It had -- that decision had      19 to be -- go out -- the plan says five days. We understood that      20 it was okay to be five business days.</p> <p>21 And so that's -- that's -- we didn't have the -- there      22 wasn't time in a situation where you've got six board      23 members -- each board member lives in a different city. We're      24 in a -- we're in yet another city where we're holding the board      25 meeting. Most of the staff who was going to be doing the</p>

<p style="text-align: center;">Page 173</p> <p>1 fiduciary duties, correct?</p> <p>2 A. I cannot delegate a fiduciary duty.</p> <p>3 Q. Okay. So you delegated the review of the records for</p> <p>4 disability decisions, correct?</p> <p>5 A. We delegated some responsibilities, yes.</p> <p>6 Q. You can't cast a vote on what a disability decision is or</p> <p>7 isn't if you haven't actually reviewed the documents, right?</p> <p>8 A. That's completely incorrect. I don't agree with that at</p> <p>9 all. I mean, these are -- when you've been on the board a long</p> <p>10 time and you understand the Plan document well and you</p> <p>11 understand the issues on appeal, it wasn't necessary for me to</p> <p>12 read all of the medical information, much of which came back</p> <p>13 from 2009, 2014, that long predicated the 2016 application.</p> <p>14 It wasn't necessary. And I relied on the lawyers. If</p> <p>15 there was something in that -- in those documents, they would</p> <p>16 bring it to my attention or to the board's attention. So, no,</p> <p>17 I don't think I had to do that to perform my fiduciary duties.</p> <p>18 Q. So wasn't it your Plan practice to actually review the</p> <p>19 decision letters before they went out, correct?</p> <p>20 A. It was not -- I did not review decision letters before</p> <p>21 they went out, correct. And I think, as I explained to you</p> <p>22 before, it's not practical to do that with the time limit we</p> <p>23 had.</p> <p>24 Q. You didn't review decision letters nor comment on them,</p> <p>25 correct?</p>	<p style="text-align: center;">Page 174</p> <p>1 A. Correct.</p> <p>2 Q. So if you haven't reviewed the decision letters, you don't</p> <p>3 know how certain terms were defined in those decision letters;</p> <p>4 is that correct?</p> <p>5 A. No, that's not correct. There's a practice that we had,</p> <p>6 and a way and a process that we followed. Again, we had a</p> <p>7 checks-and-balances system. I knew I had lawyers looking at</p> <p>8 these documents from different perspectives. We had been doing</p> <p>9 this together for many years. We felt -- I felt personally</p> <p>10 comfortable relying on them once we made a decision to get out</p> <p>11 a template decision, consistent with many letters we had done,</p> <p>12 to let the player know what the decision of the board was. So</p> <p>13 I felt comfortable in the system.</p> <p>14 Q. Mr. Cass, this will go a lot faster if you'll just answer</p> <p>15 my question. If Mr. Meehan has follow-up, he can certainly ask</p> <p>16 it. I'm not asking you to argue the case here. Just answer my</p> <p>17 questions, okay?</p> <p>18 It wasn't your practice to review any decision letters</p> <p>19 once they were sent out, correct?</p> <p>20 A. That's true.</p> <p>21 Q. So whoever wrote the decision letters is actually who came</p> <p>22 up with the definitions in those documents, correct?</p> <p>23 A. No.</p> <p>24 Q. Do you know how many different definitions of "changed</p> <p>25 circumstances" have been used over the years?</p>
<p style="text-align: center;">Page 175</p> <p>1 A. There's different languages in some of the letters, but</p> <p>2 it's not -- it's not really changing the definition or the</p> <p>3 meaning of "changed circumstances" as we consistently applied</p> <p>4 it.</p> <p>5 Q. Were you given various decision letters to review in your</p> <p>6 preparation here today?</p> <p>7 A. I really just looked at the -- a decision letter relating</p> <p>8 to Mr. Cloud. And maybe there were a couple of others I've</p> <p>9 seen over the last -- maybe from my deposition I looked at some</p> <p>10 others. I can't remember right now.</p> <p>11 Q. So I'm going to show you --</p> <p>12 MR. DENNIE: This is in Tab 85, Your Honor. This is a</p> <p>13 part of Plaintiff's Exhibit 2-11.</p> <p>14 Q. Would you agree this is from the same board meeting as to</p> <p>15 where Mr. Cloud's case was decided?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know what this case is?</p> <p>18 A. I have no idea.</p> <p>19 Q. You wouldn't be able to know or tell me about this case</p> <p>20 because you haven't reviewed this letter ever, correct?</p> <p>21 A. Well, that may not be true. It may come back to us in</p> <p>22 another form, and so I saw it in a later proceeding. It's</p> <p>23 possible. But I don't -- with the names and everything blacked</p> <p>24 out, I have no way of -- of knowing who this is or what it is.</p> <p>25 Q. So this case says that -- dadgum it -- sorry. This case</p>	<p style="text-align: center;">Page 176</p> <p>1 says the record encompassed more than 1,500 pages. Do you see</p> <p>2 that?</p> <p>3 A. I do.</p> <p>4 Q. Fair to say you didn't read those 1,500 pages either?</p> <p>5 A. It is fair to say that, yes.</p> <p>6 THE COURT: Did you ever -- or did the board ever</p> <p>7 direct the people you delegated responsibilities to to read all</p> <p>8 medical records for the players that were submitting</p> <p>9 applications, or was it, by the time you got on the board, you</p> <p>10 just assumed that they were read?</p> <p>11 THE WITNESS: I never issued a directive to that</p> <p>12 effect.</p> <p>13 THE COURT: Have you seen that directive?</p> <p>14 THE WITNESS: Pardon?</p> <p>15 THE COURT: Have you ever seen a directive that --</p> <p>16 THE WITNESS: No, Your Honor, I never saw a directive.</p> <p>17 THE COURT: Thank you.</p> <p>18 Q. You would agree that the board is the decision-making</p> <p>19 fiduciaries as it pertains to determination of disability</p> <p>20 benefits applications, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Do you agree that the decision-making fiduciaries of the</p> <p>23 Plan must carefully apply the rules of the Plan while reviewing</p> <p>24 voluminous records?</p> <p>25 A. I mean, the people involved in the process had to do all</p>

Page 177	Page 178
<p>1 of that, yes.</p> <p>2 Q. Okay. But you're testifying here today that you did not</p> <p>3 review these voluminous records?</p> <p>4 A. I'm testifying here today that I personally looked at -- I</p> <p>5 looked at documents that made me comfortable in making a</p> <p>6 decision. Other documents I may not have reviewed, but I was</p> <p>7 relying on others to have reviewed that and to bring to my</p> <p>8 attention something that I may have missed.</p> <p>9 These voluminous records, you know, lots of times</p> <p>10 they're -- I'll get into it some other -- I should not be</p> <p>11 giving testimony unless I get a question. I will not --</p> <p>12 Q. I agree.</p> <p>13 A. Yes. I know you do.</p> <p>14 Q. It will go a lot quicker if we just kind of stick to my</p> <p>15 questions.</p> <p>16 THE COURT: Okay. Ask your next question.</p> <p>17 Q. I'm going to show what's been marked Plaintiff's</p> <p>18 Exhibit 17. Do you recognize Douglas W. Ell and Alvaro I.</p> <p>19 Anillo?</p> <p>20 A. Yes. I know both of them.</p> <p>21 Q. Those are lawyers at the Groom firm?</p> <p>22 A. They're both partners at the Groom firm, yes.</p> <p>23 Q. And they wrote a letter to the Department of Labor dated</p> <p>24 January 19, 2016?</p> <p>25 A. I see that, yes.</p>	<p>1 Q. If we go down to Page 3 here, they represent to the</p> <p>2 Department of Labor -- that top paragraph there: [As read] The</p> <p>3 decision-making fiduciaries of the Plan must not only carefully</p> <p>4 apply all of these rules, they must do so while reviewing</p> <p>5 voluminous records. It's typical for a claimant to submit</p> <p>6 hundreds or thousands of pages of documents, including their</p> <p>7 entire college and NFL player -- or excuse me -- NFL medical</p> <p>8 records.</p> <p>9 Did I read that correctly other than that slipup?</p> <p>10 A. You did. You did.</p> <p>11 Q. Do you disagree with this?</p> <p>12 A. No, I don't disagree with it. I don't think it's -- I</p> <p>13 mean, it's not -- again, I think there's a difference between</p> <p>14 decision-making fiduciaries, meaning me personally, or that I'm</p> <p>15 okay del -- I delegated some of this responsibility. Can I</p> <p>16 just make a quick comment here?</p> <p>17 Q. I think he can help you with that, so let's kind of stick</p> <p>18 to the questions.</p> <p>19 THE COURT: Comments are for later.</p> <p>20 THE WITNESS: Okay. Okay.</p> <p>21 THE COURT: I'll let you have a break.</p> <p>22 THE WITNESS: All right.</p> <p>23 THE COURT: Go ahead.</p> <p>24 Q. This doesn't mention anything about delegating tasks to</p> <p>25 unknown --</p>
Page 179	Page 180
<p>1 A. No.</p> <p>2 Q. -- individuals?</p> <p>3 A. It does not.</p> <p>4 Q. This says: [As read] The decision-making fiduciaries</p> <p>5 review this voluminous record, correct?</p> <p>6 A. Yes. It does say that.</p> <p>7 Q. And you would expect if something's going to be provided</p> <p>8 to the Department of Labor, that it should be accurate?</p> <p>9 A. I think this letter's accurate.</p> <p>10 MR. DENNIE: Your Honor, we're going to go to Tab 60.</p> <p>11 Q. So, Mr. Cass, before I pull it up, one quick second.</p> <p>12 Belinda Lerner was an advisor, correct?</p> <p>13 A. Is still an advisor, yes.</p> <p>14 Q. You're not on the board anymore so it doesn't matter to</p> <p>15 you either way if she's in it or not, correct?</p> <p>16 A. No, but I'm -- I'm just correcting -- I'm -- you're right.</p> <p>17 Okay. She is still an advisor, but it doesn't matter for this</p> <p>18 purpose. Yes.</p> <p>19 Q. Back in 2016, Patrick Reynolds was also an advisor of the</p> <p>20 board?</p> <p>21 A. Patrick Reynolds was the NFL representative on the Initial</p> <p>22 Claims Committee.</p> <p>23 Q. So I'm showing you Plaintiff's Exhibit 3-7 starting at</p> <p>24 XFile 252350. This is an e-mail from Patrick Reynolds to</p> <p>25 LaShay Rose at the Benefits Office dated November 15, 2016. Do</p>	<p>1 you see that?</p> <p>2 A. I do.</p> <p>3 Q. Patrick Reynolds is saying: [As read] Would you please</p> <p>4 have 20 of these packets printed and stapled, sent out to my</p> <p>5 room.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Okay. He talked about what was discussed or given to you</p> <p>9 by Belinda Lerner in those premeetings. Do you recall that?</p> <p>10 A. I don't recall that premeeting specifically, no.</p> <p>11 Q. Is this what you were given? If you need me to make it</p> <p>12 bigger, let me know.</p> <p>13 A. No, I can read it. This is the type of thing we would</p> <p>14 have been -- we would have been given, yes.</p> <p>15 Q. You would agree that this document, dated November 15,</p> <p>16 2016, doesn't actually give a basis for denial of Mr. Cloud's</p> <p>17 claim?</p> <p>18 A. It doesn't. It does not say that right there, no.</p> <p>19 Q. Okay. And I'll go down to the bottom of it just for</p> <p>20 clarity; so I don't want you to think I'm holding anything out</p> <p>21 on you.</p> <p>22 A. No. She would've -- when in the meeting, she would have</p> <p>23 given an oral thing about why we were not -- and why she didn't</p> <p>24 view this as -- that the appeal should be granted.</p> <p>25 Q. You don't recall that meeting at all from November 16,</p>

Page 181	Page 182
<p>1      2016, correct?</p> <p>2      A. Correct. I'm just talking about the practice.</p> <p>3      Q. Okay. You would agree that this document here, which is a</p> <p>4      spreadsheet that was sent by Patrick Reynolds, who was a member</p> <p>5      of the committee on November 15, 2016, doesn't make any</p> <p>6      reference to any of Mr. Cloud's symptoms; is that correct?</p> <p>7      From 2016 application?</p> <p>8      A. I can't tell for certain. He talks about depression,</p> <p>9      which was in both '14 and '16, so I can't tell from this alone.</p> <p>10     Q. Okay. This document here that's in front of you,</p> <p>11     Article 3.7, of plaintiff's exhibit, it doesn't make any</p> <p>12     reference to changed circumstances, correct?</p> <p>13     A. It does not.</p> <p>14     Q. It doesn't make any reference to untimeliness under</p> <p>15     Section 12.6(a), correct?</p> <p>16     A. It does not.</p> <p>17     Q. It doesn't make a single reference to "shortly after"</p> <p>18     under Section 5.3(e)?</p> <p>19     A. It does not.</p> <p>20     Q. Do you know whether Belinda Lerner only reviewed the</p> <p>21     summary that was prepared by the Groom firm?</p> <p>22     A. I don't know what Belinda Lerner specifically looked at in</p> <p>23     connection with Mr. Cloud's appeal.</p> <p>24     Q. You believe that Alvaro Anillo wrote Mr. Cloud's decision</p> <p>25     letter; is that correct?</p>	<p>1      A. I don't really know who wrote it. I think people from the</p> <p>2      Groom law firm wrote it, I think is what I indicated in my</p> <p>3      deposition, is what I believe. But I'm not sure.</p> <p>4      Q. You assumed that Alvaro Anillo wrote the decision letter,</p> <p>5      correct?</p> <p>6      A. That's what I said in my deposition, yeah, but, as I said,</p> <p>7      I don't know.</p> <p>8      Q. So you were asked a question earlier by the Court. Did</p> <p>9      you know Natallia Maroz was a paralegal in 2016?</p> <p>10     A. I thought she had gotten her law degree before then and</p> <p>11     was -- was a member of the bar, but maybe she was -- her title</p> <p>12     was paralegal, but I think she's a lawyer.</p> <p>13     Q. She wasn't in 2016 though. Do you understand that?</p> <p>14     A. I didn't have any understanding, one way or the other,</p> <p>15     about it really. Except I thought she was a member of the bar.</p> <p>16     Q. You would agree that paralegals require a different level</p> <p>17     of oversight than a lawyer, correct?</p> <p>18     A. My experience is a paralegal depends totally on the</p> <p>19     paralegal.</p> <p>20     Q. You're telling me that you believe a partner in a law firm</p> <p>21     wrote a letter -- a decision of a disability case -- requires</p> <p>22     the same oversight as a paralegal?</p> <p>23     A. You know, let me just say this. I thought -- there</p> <p>24     are -- if you compare a paralegal to an associate, there's a</p> <p>25     lot of paralegals, in my experience, that I would trust a lot</p>
Page 183	Page 184
<p>1      more than a young associate, number one. And that's just the</p> <p>2      reality of the situation. You know, some women who have been</p> <p>3      paralegals for a long time are very experienced. I -- but I</p> <p>4      think -- this letter's not only reviewed by -- there's -- a lot</p> <p>5      of people in the review process over time, so it's not just one</p> <p>6      person reviewing it.</p> <p>7      Q. You don't know who reviewed Mr. Cloud --</p> <p>8      A. No, I don't. I'm talking about practice.</p> <p>9      Q. Okay. But you're not given the opportunity to review it</p> <p>10     yourself, correct?</p> <p>11     A. There's not enough time. That's correct.</p> <p>12     Q. Natallia Maroz did not attend the November 15, '16, board</p> <p>13     meeting; is that correct?</p> <p>14     A. I think that's correct. I don't remember her being there.</p> <p>15     Q. You didn't talk to Natallia Maroz about any decisions made</p> <p>16     by the board as it pertains to Mr. Cloud; is that correct?</p> <p>17     A. I did not.</p> <p>18     Q. You didn't e-mail Natallia Maroz about any decision made</p> <p>19     by the board; is that correct?</p> <p>20     A. That's correct.</p> <p>21     Q. So I'm going to show you plaintiff --</p> <p>22     THE COURT: Mr. Dennie, we've been going an hour and</p> <p>23     45 minutes.</p> <p>24     MR. DENNIE: Has it been that long? Okay.</p> <p>25     THE COURT: Yes, it has. So when you get to a stopping</p>	<p>1      point, we're going to take a break.</p> <p>2      MR. DENNIE: Now is fine, Your Honor, if we want to do</p> <p>3      that.</p> <p>4      THE COURT: Okay. Everyone, we're going to take a</p> <p>5      15-minute break. A 15-minute recess. Come back at 2:30.</p> <p>6      SECURITY OFFICER: All rise.</p> <p>7      (Off the record.)</p> <p>8      Back on the record. Continue your cross. Please.</p> <p>9      MR. DENNIE: Okay. Thank you, Your Honor.</p> <p>10     Q. Mr. Cass, when we broke there, we were talking a little</p> <p>11     bit about, you know, the decision itself. So I'm going to kind</p> <p>12     of go back to that and get some information there and how that</p> <p>13     information came about.</p> <p>14     So you indicated earlier that you do not believe that</p> <p>15     Natallia Maroz attended the November 2016 board meeting,</p> <p>16     correct?</p> <p>17     A. I think that's true. I don't think she did.</p> <p>18     Q. I'm going to show you this e-mail, which is Tab 63 in our</p> <p>19     book and Plaintiff's Exhibit 3-7, XFILE-2368.</p> <p>20     So if you see this, does it appear to be an e-mail from</p> <p>21     Natallia Maroz to Sam Vincent, requesting the basis for a</p> <p>22     decision in various cases?</p> <p>23     A. I see that, yes.</p> <p>24     Q. And if you'll look down here, can you see that okay, sir?</p> <p>25     A. Yes.</p>

Page 289

1 REPORTER'S CERTIFICATE  
2 I, Thu Bui, CRR, RMR, Official Court Reporter,  
3 United States District Court, Northern District of Texas, do  
hereby certify that the foregoing is a true and correct  
transcript, to the best of my ability and understanding, from  
the record of the proceedings in the above-entitled and  
numbered matter.

5  
6 /s/ Thu Bui  
Official Court Reporter  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25